

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROGACIANO GONZALES-MENDOZA,

Petitioner,

vs.

RICHARD MORGAN,

Respondent.

NO. CV-05-5065-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING
PETITION AND DENYING PENDING
MOTIONS AS MOOT

BEFORE THE COURT is Petitioner's "Objections to Magistrate Judge's Report and Recommendations" (Ct. Rec. 10). Magistrate Judge Imbrogno recommended dismissal of the Petition on August 18, 2005, finding Petitioner had failed to demonstrate extraordinary circumstances beyond his control prevented him from timely filing his federal habeas petition. See *Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999).

Petitioner's assertion that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) does not apply to a decision of the Indeterminate Sentencing Review Board is without merit. The Ninth Circuit has held, "§ 2244's one-year limitation period applies to all habeas petitions filed by persons in 'custody pursuant to the judgment of a State court,' 28 U.S.C. § 2244(d)(1), even if the petition

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1 challenges a pertinent administrative decision rather than a state
2 court judgment." *Shelby v. Bartlett*, 391 F.3d 1061, 1063 (9th Cir.
3 2004).

After review of the record and Petitioner's Objections¹, the court finds he has failed to demonstrate an equitable basis to toll the limitations period under the AEDPA. Therefore, **IT IS ORDERED** the Report and Recommendation (Ct. Rec. 9) is **ADOPTED** in its entirety. **IT IS FURTHER ORDERED** the Petition is **DISMISSED WITH PREJUDICE** as time-barred under 28 U.S.C. § 2244(d) and any pending motions are **DENIED as moot.**

11 **IT IS SO ORDERED.** The District Court Executive is directed to
12 enter this Order, enter judgment, forward a copy to Petitioner at his
13 last known address, and close the file.

DATED this 3rd day of October, 2005.

s/ ROBERT H. WHALEY
CHIEF UNITED STATES DISTRICT JUDGE

'This court agrees that no prisoner should be relegated to performing sexual acts for other prisoners as payment for assistance in communicating with the court. Petitioner should contact his counselors regarding this issue, and/or proceed through the available grievance procedures, insisting other means of interpretation be provided to him.

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